

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

COLETTE ARINWINE-WALLACE,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-15-1386-F
)	
UNITED PARCEL SERVICE, INC.,)	
)	
Defendant.)	


ORDER

Before the court is Defendant's Motion for Summary Judgment, filed September 30, 2016. Doc. no. 35. Upon review of all of the parties' submissions, including the sur-replies, the court finds that defendant's motion should be denied.¹ The court concludes that the record contains sufficient evidence to raise genuine issues of material fact as to the prima facie case and the matter of pretext with respect to plaintiff's claims of race discrimination and her claim of disability discrimination. The court also concludes that the record contains sufficient evidence to raise genuine issues of material fact as to the prima facie case with respect to plaintiff's retaliation claim.

¹ In her response to defendant's summary judgment motion, plaintiff withdraws her claims based upon the failure to accommodate her disability outside of feeder driving training and the existence of a hostile work environment. *See*, doc. no. 39, p. 11. Rather than have plaintiff amend her complaint under Rule 15(a), Fed. R. Civ. P., to exclude these claims as Rule 41, Fed. R. Civ. P., only permits the dismissal of an "action," the final pretrial order, which supersedes all pleadings and controls the subsequent course of the litigation, shall not include any reference to these claims.

Accordingly, Defendant's Motion for Summary Judgment, filed September 30, 2016 (doc. no. 35), is **DENIED**. This matter shall proceed to jury trial as previously scheduled.

DATED January 5, 2017.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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